

Body-Worn Cameras

Introduction

Body-worn cameras are having a tremendous impact on the policing profession across our state and our nation. Our law enforcement coalition, consisting of the Minnesota Chiefs of Police Association, the Minnesota Sheriff's Association and the Minnesota Police and Peace Officers Association, believes the technology provides a powerful tool to improve evidence collection, to resolve citizen complaints, to maintain trust with our communities and to enhance professionalism in policing.

Police body-worn cameras also raise extraordinary new issues around the personal privacy of citizens who interact with police officers, particularly during interactions that are non-criminal.

As the working group assembled by the League of Minnesota Cities in 2015 wrote: *"The vast majority of police officer interactions with the public do not involve criminal investigations, and individuals have legitimate concerns about whether these non-criminal interactions with the police should be made available to the general public."*

The Minnesota Government Data Practices Act (MGDPA) provides privacy protections for certain crime victims, witnesses, minors, and vulnerable adults, but the video data collected on the vast majority of crime victims and citizens would be public data and available to anyone who requested it."

Our coalition also believes that citizens who simply need help from police officers, but are never legally categorized as crime victims or crime witnesses should be protected by the MGDPA. We worry that if all body camera data is public that it likely would prevent some individuals from calling the police when their involvement with police could be vital in preventing and solving crimes or aid in the apprehension of criminals. We all have invested great resources to convince the public to call their local police to help solve crimes and to create an obstruction for this to happen could have a devastating impact in all of our communities throughout our state.

Guiding Principles of the Law Enforcement Coalition's position

The leading legislative priority for the 2016 legislative session is to support the legislature's passing of a comprehensive body-worn camera law.

We believe law enforcement, lawmakers and stakeholders must strike a balance between personal privacy and transparency when developing a comprehensive data practices solution to body-worn camera data.

Here are the guiding principles of our position:

- We are supportive of a bill that classifies and clearly clarifies when body-worn camera footage is public and accessible

- We are supportive of a bill that classifies body worn camera footage taken in places where there is a reasonable exception of privacy as private on individuals unless an officer uses deadly force that causes great bodily harm
- We believe more clarification is critical around Minnesota Statute 13.82 subdivision 7, particularly the common sensibilities language. More clarity is needed to protect the individual privacy concerns, which are often not related to a criminal investigation
- We believe the video data should be made available to the data subject or a representative of the subject within a reasonable period of time. If the video data is part of an active criminal investigation it should be regarded as confidential on individuals until such time as the investigation becomes inactive or adjudicated
- We believe that the officer using the body-worn camera should be granted access to the data before he or she is expected to prepare a written report or submit to a formal statement
- Specific retention times should be the decision of local municipalities as they have varied budgets and citizen review policies and procedure. Local municipalities retention schedules for body-worn camera data will be public information
- Data must be held long enough so that it is available to be accessed when a citizen files a complaint against an officer alleging misconduct
- Any police agency using body cameras should have a written policy on their use and made public
- We are supportive of language that would require data requests to be for a specific event with an approximate time and date

Currently, Minnesota law presumes that most inactive investigatory data is considered public. While the Minnesota Court of Appeals has held that when public and non-public data is inextricably intertwined that data may be withheld, our coalition does not feel that unilaterally withholding data under these circumstances provides the clarity for our City Attorneys or the public who rightly demands accountability.

Generally, current law regards body camera data for the following in-active criminal investigations public:

- Video of a response to a verbal domestic call for service deemed non-criminal
- Video of virtual entry into people's homes for purposes of taking a report or discussing a concern
- Video of a response to mental health crisis situations
- Video of medical emergency response by police personnel
- Video of suicide victims following determination of manner and cause by a medical examiner or coroner
- Video of the contents of the private homes of individuals obtained in response of incidents of a non-criminal nature
- Video data of persons in a compromised or vulnerable state – intoxicated, drug-involved, unclothed, fearful, etc.
- Video of the details of the civil disputes in which law enforcement officers are called for peacekeeping or order maintenance.

These are instances in which individuals are often at their most vulnerable state. It is our position that these data should not be public information unless the subject of the data wants the data made public.

Conclusion

Reform of Chapter 13 of the Minnesota Data Practices Act recognizing the unique and powerful role of body worn camera data will improve evidence collection, allow for access by data subjects, enhance public transparency and provide expedited resolution of citizen complaints.

As was the Legislature's decision regarding audio recordings of 911 calls, it is imperative that body worn camera data be regarded for its ability to provide highly sensitive – even personal - data on private citizens. Body worn camera data is unique from traditional law enforcement data and Minnesota law should reflect that recognition.